

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KEVIN FORDERINGHAM, ROBERT
RODGERS

Plaintiff,

-against-

CITY OF NEW YORK; Police Officer DANIEL
HACHEMEISTER, (Shield No. 31650) and JOHN
and JANE DOE 1 through 10, individually and in
their official capacities (the names John and Jane
Doe being fictitious, as the true names are presently
unknown),

Defendants.
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**FIRST AMENDED
COMPLAINT**

Jury Trial Demanded

2013-CV-4642 (SJ)(RLM)

NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution.

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331, 1343 and 1367(a).

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 (b) and (c).

JURY DEMAND

5. Plaintiff demands a trial by jury in this action.

PARTIES

6. Plaintiffs Kevin Forderingham (“Forderingham”) and Robert Rodgers (“Rodgers”) are residents of Kings County in the City and State of New York.

7. Defendant City of New York is a municipal corporation organized under the laws of the State of New York. It operates the NYPD, a department or agency of defendant City of New York responsible for the appointment, training, supervision, promotion and discipline of police officers and supervisory police officers, including the individually named defendants herein.

8. Defendant Police Officer Daniel Hachemeister, (“Hachemeister”), at all times relevant herein, was an officer, employee and agent of the NYPD. Defendant Hachemeister is sued in his individual and official capacities.

9. At all times relevant defendants John and Jane Doe 1 through 10 were police officers, detectives or supervisors employed by the NYPD. Plaintiff does not know the real names and shield numbers of defendants John and Jane Doe 1 through 10.

10. At all times relevant herein, defendants John and Jane Doe 1 through 10 were acting as agents, servants and employees of defendant City of New York and the NYPD. Defendants John and Jane Doe 1 through 10 are sued in their individual and official capacities.

11. At all times relevant herein, all individual defendants were acting under color of state law.

STATEMENT OF FACTS

12. At approximately 8:31 p.m. on October 25, 2012, plaintiffs were lawfully within the vicinity of 2750 West 33rd Street, Brooklyn, NY.

13. Plaintiff had been visiting a friend who resided at the above address.

14. As plaintiffs entered a stairwell, defendants, including Hachemeister, approached plaintiffs and began searching them. Plaintiffs objected to the unwarranted intrusion.

15. Plaintiffs possessed nothing illegal. The defendants asked plaintiffs for their identification and plaintiffs complied.

16. Plaintiffs told the defendants that they had done nothing wrong and asked to leave.

17. Despite the fact that they had no probable cause to believe that plaintiffs had committed any crimes or offenses, the officers placed plaintiff under arrest.

18. The officers transported plaintiff to the police precinct.

19. At the precinct, defendants falsely informed employees of the Kings County District Attorney's Office that they had observed plaintiff trespassing.

20. At no point did the officers observe plaintiff trespassing

21. Plaintiffs were taken to Brooklyn Central Booking and were arraigned in

Kings County Criminal Court.

22. After approximately twenty-four hours in custody, plaintiffs were released when they accepted an ACD.

23. Plaintiff suffered damage as a result of defendants' actions. Plaintiff was deprived of his liberty, suffered emotional distress, mental anguish, fear, pain, bodily injury, anxiety, embarrassment, humiliation, and damage to his reputation.

FIRST CLAIM
42 U.S.C. § 1983

24. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

25. Defendants, by their conduct toward plaintiffs alleged herein, violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

26. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

SECOND CLAIM
Unlawful Stop and Search

27. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

28. Defendants violated the Fourth and Fourteenth Amendments because they stopped and searched plaintiff without reasonable suspicion.

29. As a direct and proximate result of this unlawful conduct, plaintiff sustained the damages herein before alleged.

THIRD CLAIM

False Arrest

30. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

31. Defendants violated the Fourth and Fourteenth Amendments because they arrested plaintiff without probable cause.

32. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

FOURTH CLAIM

Failure To Intervene

33. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

34. Those defendants that were present but did not actively participate in the aforementioned unlawful conduct observed such conduct, had an opportunity prevent such conduct, had a duty to intervene and prevent such conduct and failed to intervene.

35. Accordingly, the defendants who failed to intervene violated the First, Fourth, Fifth And Fourteenth Amendments.

36. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

FIFTH CLAIM
Denial Of Constitutional Right To Fair Trial

37. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

38. The individual defendants created false evidence against Plaintiff.

39. The individual defendants forwarded false evidence to prosecutors in the Kings County District Attorney's office.

40. In creating false evidence against Plaintiff, and in forwarding false information to prosecutors, the individual defendants violated Plaintiff's constitutional right to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution.

41. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

SIXTH CLAIM
Malicious Abuse Of Process

42. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

43. The individual defendants issued legal process to place Plaintiff under arrest.

44. The individual defendants arrested Plaintiff in order to obtain collateral objectives outside the legitimate ends of the legal process, to wit, to cover up their assault of him.

45. The individual defendants acted with intent to do harm to Plaintiff without excuse or justification.

46. As a direct and proximate result of this unlawful conduct, Plaintiff sustained the damages hereinbefore alleged.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against the individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

DATED: October 22, 2013
 New York, New York

_____/ss/
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